

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 14-2919

Caption [use short title]

Motion for: Removal of the case from the expedited
appeals calendar pursuant to
Local Rule 31.1(b)(2)

New York State Citizens' Coalition for Children
 -against-
 Sheila J. Poole

Set forth below precise, complete statement of relief sought:

Both Plaintiff-Appellant and Defendant-Appellee
jointly request that the Court remove this case
from the expedited appeals calendar.

MOVING PARTY: New York State Citizens' Coalition for Children and Sheila J. Poole
☒ Plaintiff ☒ Defendant
☒ Appellant/Petitioner ☒ Appellee/Respondent

OPPOSING PARTY: _____

MOVING ATTORNEY: Adam J. HuntOPPOSING ATTORNEY: None

[name of attorney, with firm, address, phone number and e-mail]

Morrison & Foerster LLP250 West 55th St.New York, NY 10019Court-Judge/Agency appealed from: U.S. District Court for the Southern District of New York - Hon. William F. Kuntz II

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

☒ Yes ☐ No (explain): _____

Opposing counsel's position on motion:

☒ Unopposed ☐ Opposed ☐ Don't Know

Does opposing counsel intend to file a response:

☐ Yes ☒ No ☐ Don't KnowFOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND
INJUNCTIONS PENDING APPEAL:

Has request for relief been made below?

☐ Yes ☐ No

Has this relief been previously sought in this Court?

☐ Yes ☐ No

Requested return date and explanation of emergency: _____

Is oral argument on motion requested?

☐ Yes ☒ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

☐ Yes ☒ No If yes, enter date: _____

Signature of Moving Attorney:

/s/ Adam J. Hunt Date: 9/10/2014Service by: ☒ CM/ECF☐ Other [Attach proof of service]

14-2919

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

NEW YORK STATE CITIZENS' COALITION FOR CHILDREN,
Plaintiff-Appellant,

—against—

SHEILA J. POOLE,
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

**JOINT MOTION TO REMOVE THE CASE FROM THE EXPEDITED
APPEALS CALENDAR**

MORRISON & FOERSTER LLP
Grant J. Esposito
Adam J. Hunt
250 West 55th Street
New York, New York 10019

Brian R. Matsui
2000 Pennsylvania Avenue, NW
Suite 6000
Washington, DC 20006-1888

Attorneys for Plaintiff-Appellant

ERIC T. SCHNEIDERMAN
Attorney General of the
State of New York
120 Broadway
New York, NY 10271

Claude S. Platten
Assistant Attorney General
Of Counsel

*Attorneys for Defendant-
Appellee*

Pursuant to Local Rule 32.1(b)(2), Plaintiff-Appellant New York State Citizens' Coalition for Children ("Plaintiff-Appellant" or the "Children's Coalition") and Defendant-Appellee Sheila J. Poole, in her official capacity as the Acting Commissioner for the New York State Office of Children and Family Services ("Defendant-Appellee" or "OCFS") jointly move this Court to remove this case from the Expedited Appeals Calendar ("XAC").

PRELIMINARY STATEMENT

The Children's Coalition filed the lawsuit underlying this appeal on behalf of its members, licensed foster parents in New York State, seeking to enforce New York foster parents' rights under the Child Welfare Act, 42 U.S. §§ 672 and 675 (the "CWA"), to receive foster care maintenance payments that cover the costs of caring for a foster child.

The Children's Coalition and OCFS seek to remove this case from the XAC on the basis that this appeal is not well-suited for expedited treatment, as it involves complex issues involving an unsettled question of law about whether a private right of action exists under the CWA to enforce the CWA's foster care maintenance payment provisions.

I. PROCEDURAL HISTORY

The Children's Coalition filed a Complaint in the Eastern District of New York against Defendant-Appellee, seeking declaratory and injunctive relief

pursuant to 42 U.S.C. Section 1983 and asserting that Defendant-Appellee violated New York foster parents' rights by failing to provide foster care maintenance payments that are sufficient to cover the cost of caring for their foster children, in violation of Section 672(a) and 675(4)(A) of the CWA.

After conducting discovery, the Children's Coalition filed for summary judgment and Defendant-Appellee filed a motion to dismiss.

The District Court granted Defendant-Appellee's motion to dismiss, concluding that the Children's Coalition lacked standing because no private right of action exists under Section 672(a) and 675(4)(A) of the CWA. Final judgment was entered on July 17, 2014.

Plaintiff-Appellant filed a Notice of Appeal, and the Court placed this appeal on XAC, setting the date for the Children's Coalition's opening brief to be due on October 3, 2014 and the date for Defendant-Appellee's brief to be due on November 7, 2014.

II. ARGUMENT

This case involves a complex issue of statutory interpretation that has divided federal courts—whether a private right of action exists under Sections 672(a) and 675(4)(A) of the CWA. There is currently a circuit split on this issue. The Ninth Circuit has held that a private right of action exists under these sections of the CWA. *See California State Foster Parent Ass'n v. Wagner*, 624 F.3d 974

(9th Cir. 2010). By contrast, the Eight Circuit has concluded that no private right of action exists. *See Midwest Foster Care and Adoption Ass'n v. Kincade*, 712 F.3d 1190 (8th Cir. 2013). Both the Children's Coalition and OCFS respectfully submit that this case be removed from the XAC so that the parties can fully research and brief this complex and important issue.

CONCLUSION

For the reasons set forth above, Plaintiff-Appellant and Defendant-Appellee submit that good cause exists for this Court to remove this case from the XAC and respectfully requests that this case be removed from the XAC and that Plaintiff-Appellant be permitted to submit its opening brief on November 14, 2014 (which is within the 91 day limit set forth in Local Rule 31.2(a)(1)(A)).

Dated: New York, New York
September 10, 2014

By: /s/ Adam J. Hunt

MORRISON & FOERSTER LLP
Grant J. Esposito
Adam J. Hunt
250 West 55th Street
New York, NY 10019-9601
Telephone: (212) 468-8000

Brian R. Matsui
2000 Pennsylvania Avenue, NW
Suite 6000
Washington, DC 20006-1888
Telephone: (202) 887-1500

Attorneys for Plaintiff-Appellant

By: /s/ Claude S. Platton

ERIC T. SCHNEIDERMAN
Attorney General of the
State of New York
120 Broadway
New York, NY 10271

Claude S. Platton
Assistant Attorney General
Of Counsel

CERTIFICATE OF SERVICE

This is to verify that true and correct copies of the foregoing document have been filed via electronic filing and served by electronic mail on this 10th day of September, 2014 on counsel for Defendant-Appellee.

/s/ Adam J. Hunt

Adam J. Hunt

Counsel for Plaintiff-Appellant

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

Certificate of Compliance with Type-Volume Limitation,
Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitations of FED. R. APP. P. 32(a)(7)(B) because this brief contains 537 words, excluding the parts of the brief exempted by FED. R. APP. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14 pt Times New Roman.

September 10, 2014

Respectfully submitted,

/s/ Adam J. Hunt
Adam J. Hunt
Counsel for Plaintiff-Appellant